APPEAL NO. 031607
FILED AUGUST 8, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on May 29, 2003. The hearing officer determined that: (1) the appellant (claimant) did not sustain a compensable injury on _____; (2) the claimant did not have disability; (3) the respondent (carrier) did not waive its right to dispute compensability of the claimed injury because it timely contested the claimed injury in accordance with Section 409.021; and (4) the claimant's average weekly wage (AWW) is $559.69, in accordance with the parties' stipulation. The claimant appealed the injury, disability, and waiver determinations on sufficiency of the evidence grounds and asserts that the hearing officer erred in admitting Carrier's Exhibit No. 1 regarding the filing of a "cert-21." The carrier urges affirmance. The AWW determination was not appealed and is, therefore, final. Section 410.169.

DECISION

Affirmed.

We first address the claimant's assertion that the hearing officer erred in admitting Carrier's Exhibit No. 1. The exhibit is comprised of the carrier's electronic filing of a "cert-21" and an acknowledgement of receipt on February 28, 2003, by the Texas Workers' Compensation Commission (Commission). The claimant objected to the admission of the document at the hearing, asserting that it was not exchanged within 15 days after the benefit review conference as required by Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.13(c) (Rule 142.13(c)). The carrier's attorney conceded that it exchanged the document beyond the 15-day exchange period but asserted good cause. The hearing officer admitted Carrier's Exhibit No. 1, as a record of the Commission essential to the resolution of the waiver issue. Section 410.163(b) provides, in part, that a hearing officer shall ensure the preservation of the rights of the parties and the full development of facts required for the determinations to be made. In order to resolve an issue of waiver, a hearing officer must know the date on which the carrier disputed or agreed to pay benefits. For this purpose, we have held, in similar cases, that a hearing officer did not err in admitting evidence regarding the filing of a "cert-21." Texas Workers' Compensation Commission Appeal No. 031441, decided July 23, 2003; Texas Workers' Compensation Commission Appeal No. 031476, decided July 25, 2003; *and see* Texas Workers' Compensation Commission Appeal No. 002287, decided November 13, 2000. Accordingly, we cannot conclude that the hearing officer abused his discretion in admitting the Carrier's Exhibit No. 1 in this case. Morrow v. H.E.B. Inc., 714 S.W.2d 297 (Tex. 1986).

The claimant also argues that it was error to consider Carrier's Exhibit No. 1, because the very submission to the Commission of a "cert-21" violated Rule 124.2(j)(1). Rule 124.2(j)(1), regarding carrier reporting and notification requirements, provides,

"Except as otherwise provided by this title, carriers shall not provide notices to the Commission that explain that benefits will be paid as they accrue." We note that the carrier's "cert-21" was submitted to the Commission in accordance with procedures established by Advisory 2002-15, dated September 12, 2002, whereby the Commission will "provide an acknowledgement of an insurance carrier's agreement to pay benefits as they accrue and are due." The claimant contends that Advisory 2002-15 creates an ad hoc exception to Rule 124.2(j)(1), in violation of Rodriguez v. Service Lloyds Insurance Company, 997 S.W.2d 548 (Tex. 1999). Whether the Commission exceeded its authority in issuing Advisory 2002-15 is a matter for the courts. Appeal No. 031441; *and see* Texas Workers' Compensation Commission Appeal No. 010160, decided March 8, 2001. For the reasons stated above, we perceive no error in the hearing officer's admission of Carrier's Exhibit No. 1.

The hearing officer did not err in making the complained-of determinations. The determinations involved questions of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). In view of the evidence presented, we cannot conclude that the hearing officer's determinations are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The decision and order of the hearing officer is affirmed.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

RUSSELL RAY OLIVER, PRESIDENT
221 WEST 6TH STREET, SUITE 300
AUSTIN, TEXAS 78701.

_____
Edward Vilano
Appeals Judge

CONCUR:

_____
Judy L. S. Barnes
Appeals Judge

_____
Veronica Lopez-Ruberto
Appeals Judge